



FALSE CLAIMS PREVENTION POLICY

PURPOSE:

To establish a policy in accordance with the Deficit Reduction Act of 2005 (DRA 2005) ensuring employees, contractors and agents of Option Care receive information about the federal False Claims Act and applicable state laws, as well as information regarding Option Care's policies and programs to detect and prevent fraud, waste and abuse in federal health care programs.

POLICY:

Option Care is committed to the reduction of waste, fraud and abuse in the healthcare system. As a provider that receives funds from federal health care programs, Option Care is responsible for establishing and disseminating detailed information regarding Federal and State False Claims Acts and related whistleblower protection laws to all employees, agents and contractors, and taking measures to prevent and detect false claims.

DEFINITIONS:

1. Federal False Claims Act

The False Claims Act is a federal law that makes it a crime for any person or organization to knowingly make a false record or file a false claim with any federal health care program, which includes any plan or program that provides health benefits, whether directly, through insurance or otherwise, that is funded directly, in whole or in part, by the United States Government or any state healthcare system. Knowingly includes having actual knowledge, acting with "reckless disregard", or acting in "deliberate ignorance" as to whether a claim is false.

Examples of false claims include billing for services not provided, billing for the same service more than once, falsifying treatment plans or medical records to maximize payments, falsifying certificates of medical necessity and billing for services not medically necessary, or making false statements in order to obtain payment for services.

Violations under the federal False Claims Act can result in significant fines and penalties to an individual or the organization including recovery of three times the amount of the false claim(s), plus an additional penalty of \$5,500.00 to \$10,000.00 per claim. If a provider is convicted of a False Claims Act violation, the Office of Inspector General of the Department of Health and Human Services may seek to exclude the individual or entity from continuing participation in federal health care programs.

The federal False Claims Act protects employees who report a violation under the False Claims Act from discrimination, harassment, suspension or termination of employment as a result of reporting possible fraud. Employees who report fraud and consequently suffer discrimination

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may be awarded (1) two times their back pay plus interest, (2) reinstatement of their position without loss of seniority and (3) compensation for any costs or damages they incurred.

2. **Qui Tam Plaintiff/Relator/"Whistleblower"**

An individual (called a qui tam plaintiff, relator, or whistleblower) who is an original source of information can sue for violations of the False Claims Act. Under the federal False Claims Act, a qui tam plaintiff can receive between 15 - 25% of the total amount recovered if the government prosecutes and 25 - 30% if litigated by the qui tam plaintiff.

3. **State False Claims Laws**

Many states have false claims laws that are either identical or similar to the federal False Claims Act. Those laws typically allow individuals to bring issues to the attention of the state government and possibly share in a portion of any recoveries. These laws also protect employees from retaliation or discrimination in the terms and conditions of their employment based on lawful acts done in furtherance of an action under the state false claims act.

A number of states also have laws which impose civil or criminal penalties for fraud against state health care programs, including Medicaid. Additionally, a number of states provide for administrative penalties in cases of fraud against the Medicaid program. Finally, most states have criminal provisions of general application that prohibit fraud, larceny, and false statements to government agencies that may be applicable in addressing health care fraud, waste, and abuse. A listing of various state false claims laws are set forth in Appendix A attached hereto.

4. **Agents and Contractors**

For purposes of this policy, agents and contractors shall include the following:

- a. Vendors, suppliers and other companies doing business with Option Care
- b. Contract and agency workers
- c. Board members
- d. Students and volunteers

PROCEDURE:

1. In accordance with requirements of the DRA 2005 and by the effective date of this policy, Option Care will provide new and existing employees, agents and contractors written information concerning the following:

- a. The federal False Claims Act (31 U.S.C. Sections 3729-33);
- b. Any state laws pertaining to civil or criminal penalties for false claims and statements;
- c. Protections provided to individuals under such laws and the role of such laws in preventing and detecting fraud, waste and abuse in Federal health care programs; and
- d. The role of the Option Care Compliance Program, the Standards of Business Conduct, and organizational policies and procedures for detecting and preventing fraud, waste and abuse in Federal health care programs.

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2. Employees, agents and contractors that become aware of a potential billing problem should immediately notify their supervisor and the Compliance Office at (OC-Compliance@optioncare.com) or Chief Compliance Officer at 312-940-2526. Matters may be reported anonymously to the Compliance Hotline at 844-279-8889.
3. Prompt reports of any potential billing concerns to the Compliance Office are important to allow for swift investigation and proper and timely corrective action. Potential corrective action may include:
 - a. Implementing changes to prevent the problem from continuing or reoccurring;
 - b. Making arrangements to repay or refund any overpayments; and
 - c. Disclosing the problem to state and federal officials when necessary.
4. Questions or concerns related to this policy may be directed to the Compliance Office by email at OC-Compliance@optioncare.com or by phone to any member of the Compliance Department.

REFERENCES

1. Deficit Reduction Act of 2005, Public Law 109-71
2. The Federal Civil False Claims Act, Sections 3279 through 3733 of title 31 of the United States Code
3. Federal Administrative Remedies for False Claims and Statements, Sections 3801 through 3812 of title 3 of the Social Security Act

APPENDIX A

1. CALIFORNIA

a. California Criminal Provisions

- i. California's Penal Code § 72, imposes criminal penalties for presenting false or fraudulent claims to state or local government entities. False or fraudulent claims applies to every person with intent to defraud, presents for allowance or for payment to any state board or office, or to any county, city, or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing. Any person who presents a false or fraudulent claim to state or local government entities may be punished by either a felony or a misdemeanor by:
 - Imprisonment in the county jail for a period of not more than one year;
 - A fine not exceeding one thousand dollars (\$1,000);
 - Both imprisonment and fine;
 - Imprisonment to in county jail for a period of two to three years;
 - A fine not exceeding ten thousand dollars.

b. California Civil False Claims Act

- i. The California False Claims Act ("CFCA") prohibits knowing, presenting, or causing to be presented, any false claim or statement to the State of California, or political subdivision thereof, for payment or approval. See CAL. GOV'T CODE § 12650-55.
- ii. The CFCA applies to the conduct of any person such as:
 - Knowing presents or caused to be presented a false or fraudulent claim for payment or approval;
 - Knowing makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent;
 - Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property;
 - Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly make or delivers a receipt and falsely represents the property used or to be used;
 - Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
 - Conspires to commit any acts as listed above.
- iii. The CFCA statute defines "knowing" and "knowingly" as a person, with respect to information, does any of the following: has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, and/or acts in reckless disregard of the truth or falsity of the information.
- iv. The CFCA provides that if no enforcement action to a violation has commenced or the person did not have actual knowledge of the existence of an investigation into a violation, a claim cannot be brought against anyone who voluntarily discloses the information within thirty days of the date the information was obtained and fully cooperates with the investigation.
- v. Actions cannot be brought under the CFCA for any controversy involving less than \$500 in value. Violators of the CFCA are liable for damages and a civil penalty of \$5,500 and not more than \$11,000 for each violation.
- vi. The CFCA, a person (*qui tam* plaintiff), allows whistleblowers to bring a civil action in the name of the affected agency, depending which funds are involved. Under the CFCA, if the state or political subdivision proceeds with the action the *qui tam* plaintiff is entitled to receive at least 15% but not more than 33% of the proceeds. If the state or political subdivision does not intervene, the *qui tam* plaintiff is entitled to an amount that the court determines is reasonable, which is at least 25% but not more than 50% of the proceeds.
- vii. Under CFCA, if *qui tam* plaintiff participated in the fraudulent activity, the court may reduce his or her share of any recovery.

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c. Whistleblower Protections

- i. The California Labor Code prohibits employers from making, adopting, or enforcing a rule, regulation or policy that prevents an employee from disclosing information regarding a violation of a federal or state statute or non-compliance with a local, state, or federal rule or regulation. The California Labor Code further prohibits employers from retaliation as a result of an employee who disclosed information or is believed to have disclosed information regarding a violation of a federal or state statute or non-compliance with a local, state, or federal rule or regulation. See CAL. LAB. CODE § 1102.5.
- ii. Under the CFCA Section 12653 protections are provided to whistleblowers providing him or her relief from discrimination because of lawful acts done by the employee in furtherance of a CFCA action. An employee is entitled to relief necessary to make that employee whole if the employer terminated, demoted, suspended threatened, or harassed any employee who made lawful efforts to stop one or more violations of the California False Claims Act. Relief includes reinstatement of employment with the same seniority status the employee would have had prior to discrimination, two time the amount of back pay, interest on back pay, compensation for any special damages sustained as a result of the discrimination, if appropriate punitive damages, and any litigation costs or reasonable attorneys' fees incurred as a result of the discrimination.

2. **CONNECTICUT**

a. Connecticut Provisions

- i. Connecticut requires an entity to reference the following Connecticut State Statutes and Regulations in their employee False Claims Act policies:
 - **Criminal:**
 - **Conn. Gen. Stat. Sec. 53a-290 et seq. (Vendor Fraud)** – Defines “Vendor fraud” as intent to defraud and acting on such person’s own behalf or on behalf of an entity, such person provides goods or services to a beneficiary pursuant to the State Plan or provides services to a recipient under Title XIX of the Social Security Act, as amended, and, (1) presents for payment any false claim for goods or services performed; (2) accepts payment for goods or services performed, which exceeds either the amounts due for goods or services performed, or the amounts authorized by law for the cost of such goods or services; (3) solicits to perform services for or sell goods to any such beneficiary, knowing that such beneficiary is not in need of such goods or services; (4) sells goods to or performs services for any such beneficiary without prior authorization by the Department of Social Services, when prior authorization is required by said department for the buying of such goods or the performance of any service; or (5) accepts from any person or source other than the state an additional compensation in excess of the amount authorized by law.
 - **Conn. Gen. Stat. Sec. 53-440 et seq. (Health Insurance Fraud)** – Defines “Health insurance fraud” as the intent to defraud or deceive any insurer, (1) presents or causes to be presented to any insurer or any agent thereof any written or oral statement as part of or in support of an application for any policy of insurance or claim for payment or other benefit from a plan providing health care benefits, whether for himself, a family member or a third party, knowing that such statement contains any false, incomplete, deceptive or misleading information concerning any fact or thing material to such claim or application, or omits information concerning any fact or thing material to such claim or application, or (2) assists, abets, solicits or conspires with another to prepare or present any written or oral statement to any insurer or any agent thereof, in connection with, or in support of, an application for any policy of insurance or claim for payment or other benefit from a plan providing health care benefits knowing that such statement contains any false, deceptive or misleading information concerning any fact or thing material to such application or claim. For purposes of this section,

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“misleading information” includes but is not limited to falsely representing that goods or services were medically necessary in accordance with professionally accepted standards

- **Conn. Gen. Stat. Sec. 53a-118 et seq. (Larceny)** – Defines “Larceny” as the intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:
 - (1) Embezzlement.
 - (2) Obtaining property by false pretenses.
 - (3) Obtaining property by false promise.
 - (4) Acquiring property lost, mislaid or delivered by mistake.
 - (5) Extortion.
 - (6) Defrauding of public community.
 - (7) Theft of services.
 - (8) Receiving stolen property.
 - (9) Shoplifting.
 - (10) Conversion of a motor vehicle.
 - (11) Obtaining property through fraudulent use of an automated teller machine.
 - (12) Library theft.
 - (13) Conversion of leased property.
 - (14) Failure to pay prevailing rate of wages.
 - (15) Theft of utility service.
 - (16) Air bag fraud.
 - (17) Theft of motor fuel.
 - (18) Failure to repay surplus Citizens’ Election Fund grant funds.
- **Conn. Gen. Stat. Sec. 53a-155 (Tampering With Or Fabricating Physical Evidence)** A person is guilty of tampering with or fabricating physical evidence if, believing that a criminal investigation conducted by a law enforcement agency or an official proceeding is pending, or about to be instituted, such person: (1) Alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such criminal investigation or official proceeding; or (2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such criminal investigation or official proceeding.
- **Conn. Gen. Stat. Sec. 53a-157b (False Statement Intending to Mislead Public Servant)** A person is guilty of false statement when such person (1) intentionally makes a false written statement that such person does not believe to be true with the intent to mislead a public servant in the performance of such public servant’s official function, and (2) makes such statement under oath or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.
- **Fraud:**
 - **Conn. Gen. Stat. Sec. 17b-25a (Toll free vendor fraud telephone hotline)** Requires the Commissioner of Social Services to provide toll-free telephone access for a person to report vendor fraud in any program operated by the Department of Social Services.
 - **Conn. Gen. Stat. Sec. 17b-99 (Vendor Fraud Penalties)** Any vendor found guilty of vendor fraud shall be subject to forfeiture or suspension of any franchise or license held by such vendor from the state in accordance with this subsection. Any vendor who is convicted in any state or federal court of

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a crime involving fraud in the Medicare program or Medicaid program or aid to families with dependent children program or state-administered general assistance program or temporary family assistance program or state supplement to the federal Supplemental Security Income Program or any federal or state energy assistance program or general assistance program or state-funded child care program or the refugee program shall be terminated from such programs, effective upon conviction, except that the Commissioner of Social Services may delay termination for a period he deems sufficient to protect the health and well-being of beneficiaries receiving services from such vendor. A vendor who is ineligible for federal financial participation shall be ineligible for participation in such programs. No vendor shall be eligible for reimbursement for any goods provided or services performed by a person convicted of a crime involving fraud in such programs.

- **Conn. Gen. Stat. Sec. 17b-102 (Financial Incentive for Reporting Vendor Fraud)** - Requires the Commissioner of Social Services to adopt regulations that provide a financial incentive for the reporting of vendor fraud in any program under the jurisdiction of the Department of Social Services by offering a person up to fifteen per cent of any amounts recovered by the state as a result of such person's report.
- **Regs. Conn. State Agencies Sec. 17-83k-1 et seq. (Administrative Sanctions)** - Provides for administrative sanctions against vendors of goods or services performed for or sold to beneficiaries under the Medicare program, Medicaid program, aid to families with dependent children program, state supplement to the federal supplemental security income program, or any federal or state energy assistance program or general assistance program, including suspension or termination from said programs.
- **Regs. Conn. State Agencies Sec. 17b-102-01 et seq. (Financial Incentive for Reporting Vendor Fraud and Requirements for Payment for Reporting Vendor Fraud)** – Establishes the Department of Social Services requirements for providing a financial incentive for the reporting of vendor fraud in any program under the jurisdiction of the Department of Social Services.
- **Whistleblower Protections:**
 - **Conn. Gen. Stat. Sec. 4-61dd (Whistleblowing)** Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. No state officer or employee, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for (A) such employee's or contractor's disclosure of information to (i) an employee of the Auditors of Public Accounts or the Attorney General; (ii) an employee of the state agency or quasi-public agency where such state

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officer or employee is employed; (iii) an employee of a state agency pursuant to a mandated reporter statute or pursuant; or (iv) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract; or (B) such employee's testimony or assistance in any proceeding under this section. No person who, in good faith, discloses information in accordance with the provisions of this section shall be liable for any civil damages resulting from such good faith disclosure.

- **Conn. Gen. Stat. Sec. 31-51m (Protection of Employee Who Discloses Employer's Illegal Activities or Unethical Practices)** No employer shall discharge, discipline or otherwise penalize any employee because (1) the employee, or a person acting on behalf of the employee, reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation or any municipal ordinance or regulation to a public body, (2) the employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action, or (3) the employee reports a suspected incident of child abuse or neglect pursuant to these sections. No municipal employer shall discharge, discipline or otherwise penalize any employee because the employee, or a person acting on behalf of the employee, reports, verbally or in writing, to a public body concerning the unethical practices, mismanagement or abuse of authority by such employer. The provisions of this subsection shall not be applicable when the employee knows that such report is false.
- **Conn. Gen. Stat. Sec. 31-51q (Liability of Employer for Discipline or Discharge of Employee on Account of Employee's Exercise of Certain Constitutional Rights)** Any employer, including the state and any instrumentality or political subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state of Connecticut, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages. If the court determines that such action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer.
- **Regs. Conn. State Agencies Sec. 4-61dd-1 et seq. (Rules of Practice for Contested Case Proceedings under the Whistleblower Protection Act)**
 - Sets forth the procedural court rules for proceedings subject to the Whistleblower Protection Act.

3. FLORIDA

a. Florida Criminal Provisions

- i. Florida has a criminal Medicaid Provider Fraud statute, Fla. Stat. §409.920, which applies to claims submitted to the Medicaid Agency, the Agency's fiscal agent, or a Medicaid managed care plan. The statute covers such conduct as:
 - Knowingly making, causing to be made, or aiding and abetting in the making of any false statement or representation of a material fact, by commission or omission, in a claim;

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- Knowingly failing to credit the Medicaid agency or fiscal agent with a third party payment for a Medicaid item or service;
 - Knowingly making or causing any false statement or false representation of a material fact in any financial document used to determine payment rates;
 - Knowingly submitting false or misleading information or statements to the Medicaid program for the purposes of being accepted as a Medicaid provider;
 - Knowingly using, or attempting to use, a Medicaid provider or recipient identification number to make, cause to be made, or aid and abet in the making of a claim for items or services not authorized for reimbursement;
 - Knowingly making, causing to be made, or aiding and abetting in the making of a claim for items or services not authorized for reimbursement; and,
 - Knowingly charging, soliciting, accepting, receiving, offering or paying anything of value, in cash or in kind, other than an authorized Medicaid payment or copayment, from any source in return for prescribing, furnishing ordering, or recommending an item or service to be paid for in whole or in part by Medicaid.
- ii. Violation of the statute is a felony offense, with the range of felony depending upon the amount of money at issue in the claims. Violators may receive jail time, and fines up to five times the amount of unlawful gain or loss to the Medicaid program.
- iii. Florida also has statutory provision rewarding a person who reports and furnishes original information regarding a criminal violation of the Medicaid laws, Fla. Stat. §409.9203. If the report and original information leads to a monetary recovery, the reporting individual may receive an award of 25% of the amount recovered up to a maximum of \$500,000.00 in a single case. But an individual who receives such an award is not then eligible to receive any whistleblower recoveries under the Florida Civil False Claims Act.
- b. Florida Criminal Provisions
- i. Florida's Civil False Claims Act, Fla. Stat. §§68.081 through 69.089, is not Medicaid-specific. It applies to any written or electronic request for payment made to any state agency, officer, employee or agent, or to any state contractor, grantee or recipient, if state funds pay or reimburse a portion of the funds at issue.
- ii. The Florida FCA applies to conduct such as:
- Knowingly presenting or causing to be presented to an officer or employee of an agency, a false or fraudulent claim;
 - Knowingly making, using or causing to be making or used, a false record or statement to get a claim paid or approved;
 - Conspiring to submit false or fraudulent claims or to deceive an agency for the purposes of getting a false or fraudulent claim paid or allowed; and,
 - Knowingly making, using or causing to be made a false record or statement to conceal, avoid, or decrease an obligation to pay money to an agency.
- iii. Like federal FCA, the Florida FCA defines "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Violators of the Florida FCA are liable to the state for treble damages and a civil penalty of between \$5,500-\$11,000.
- v. The Florida FCA does have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the affected agency. Whistleblowers, or relators, cannot bring an action based on allegations that are

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already the subject of civil or administrative proceedings involving the state, or regarding matters that have already been publicly disclosed in the media or in legal proceedings or public reports unless the individual qualifies as the original source of the disclosure. Additionally, under the Florida statute, government employees or attorneys are restricted from being relators or from being the source of information to a relator. If the agency or state intervenes and pursues the case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. The amount the relator receives may be reduced by the court if information other than that provided by the relator is the primary basis for a judgment or settlement. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.

- vi. Relators may have their share of any recovery reduced if they planned or initiated the underlying conduct; if the relator is convicted of any crime arising from their role, the relator will be dismissed from the FCA action and not receive any share of a recovery.
- vii. Florida has a separate whistleblower protection statute, Fla. Stat. §112.3187, which protects employees and any other person from action by entities contracting with the state to do business, such as under Medicaid provider agreements. The statute prohibits such contractors from dismissing, disciplining, or taking any other adverse personnel action for disclosing information, including suspected or actual Medicaid fraud or abuse, to a person or entity having the authority to investigate. Disclosures covered include filing complaints, participating in investigations or hearings, and making hotline complaints. Violations of the whistleblower protection statute may be investigated by the Florida Commission on Human Relations, or pursued by the impacted person through administrative or civil action within specified time frames. Relief available under the statute includes reinstatement to the same or equivalent position with full fringe benefits and seniority rights; compensation for lost wages and benefits; injunctive relief where appropriate; and payment of reasonable costs.

4. **GEORGIA**

Georgia criminal and civil statutes governing Medicaid fraud were amended in 2012.

a. Georgia Criminal Provisions

- i. Georgia's criminal Medicaid Fraud Statute, O.C.G.A. §49-4-146.1, applies to claims made for approval or payment any portion of which are paid by the Georgia Medicaid program or by a contractor, subcontractor or agent pursuant to a managed care program operated, funded or reimbursed by the Georgia Medicaid program. The statute applies to such conduct as:
 - Obtaining, attempting to obtain or retain benefits or payments to which the person is not entitled by knowingly and willfully making a false statement or representation, deliberately concealing a material fact, or a fraudulent scheme or device; or
 - Knowingly and willfully accepting Medicaid payments the person is not entitled to receive or in an amount greater than that entitled to; or
 - Knowingly and willfully falsifying any report or document required.
- ii. Violators of the statute are guilty of a felony; subject to potential imprisonment; liable for treble damages or \$1000 assessments per claim, plus interest; and may be fined up to \$10,000.
- iii. Violations of this statute, if not pursued criminally, may be the subject of civil monetary penalties up to double the amount of excess payments or benefits.

b. Georgia Civil False Claims Act

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- i. Georgia has a general civil False Claims Act, O.C.G.A. §§23-3-120 through 127, but also has a Medicaid- specific Civil False Claims Act, O.C.G.A. 49-4-168. The Medicaid FCA applies to any request or demand for money or property, whether made orally, in writing, electronically or magnetically, made to the Georgia Medicaid program or to any other person or entity if it either results in payments made in whole or in part by Georgia Medicaid, or in any reimbursement in whole or in part by Georgia Medicaid, or in expenditures on behalf of or to advance the Georgia Medicaid Program.
- ii. The Georgia FCA applies to conduct such as:
 - Knowingly presenting or causing to be presented a false or fraudulent claim;
 - Knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim;
 - Conspiring to defraud by getting a false or fraudulent claim paid or allowed;
 - Retaining possession, custody or control of property or money; and,
 - Knowingly making, using or causing to be made a false record or statement material to an obligation to pay or transmit money, or to avoid or decrease an obligation to pay or transmit property or money, to Georgia Medicaid;
- iii. Like the federal FCA, the Georgia FCA defines "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Violators of the Georgia FCA are liable to the state for treble damages and a civil penalty of between \$5,500-\$11,000 for each false statement or fraudulent claim.
- v. Like the federal FCA, the Georgia FCA contains *qui tam* provisions. A whistleblower, or relator, may bring a civil action under the Georgia FCA in the name of the state. Relators cannot file an FCA action based on allegations that are already the subject of civil or administrative proceedings involving the state, or regarding matters that have already been publicly disclosed in the media or in legal proceedings or public reports unless the individual qualifies as the original source of the disclosure. If the state intervenes to pursue the case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. The amount the relator receives may be reduced by the court if information other than that provided by the relator is the primary basis for a judgment or settlement. If the state does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- vi. Under the Georgia FCA, relators may have their share of any recovery reduced if they planned or initiated the underlying conduct; if the relator is convicted of any crime arising from their role, the relator will be dismissed from the FCA action and not receive any share of a recovery.
- vii. The Georgia Medicaid FCA contains whistleblower protections. Any employee, contractor or agent who is discharged, demoted, suspended, threatened, harassed or in any way discriminated against in the terms or conditions of employment because of lawful acts done to stop a violation of the Georgia Medicaid FCA or to further a civil action under the Georgia Medicaid FCA can, within three years, bring an action for relief. Relief may include reinstatement with seniority status, two times the back pay owed with interest, and compensation for other damages and costs.

5. HAWAII

a. Hawaii Criminal Provisions

- i. Hawaii's criminal Medicaid fraud statute, Haw. Rev. Stat. §346-43.5, makes it a felony

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offense to knowingly and willfully make or cause to be made a false statement or representation of a material fact in any application for a Medicaid benefit or payment, or to obtain more Medicaid compensation than that the person is legally entitled to receive, or to obtain Medicaid authorization to furnish supplies or services.

b. Hawaii Civil False Claims Act

- i. Hawaii does not have a Medicaid-specific Civil False Claims Act; instead, Hawaii has a civil statute applicable to false claims filed with the state, Haw. Rev. Stat. §§661-21 through 661.29.089, and a separate civil statutory provision applicable to false claims filed with a County, Haw. Rev. Stat. §§46-171 through 46-179. The statutes apply to any request or demand for payment made to any state or county agency, officer, employee or agent, or to any state or county contractor, grantee or recipient, if state or county funds pay or reimburse a portion of the funds at issue.
- ii. The Hawaii State and County FCAs apply to conduct such as:
 - Knowingly presenting or causing to be presented to an officer or employee of an agency, a false or fraudulent claim;
 - Knowingly making, using or causing to be made or used, a false record or statement to get a claim paid or approved;
 - Conspiring to defraud by getting false or fraudulent claims allowed or paid;
 - Knowingly making, using or causing to be made a false record or statement to conceal, avoid, or decrease an obligation to pay money to an agency; and,
 - Being the beneficiary of an inadvertent submission of a false claim or subsequently discovering the falsity and failing to disclose the false claim within a reasonable time.
- iii. The Hawaii FCA statutes define "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Actions cannot be brought under the Hawaii FCAs for any controversy involving less than \$500 in value. Violators of the Hawaii FCAs are liable for treble damages and a civil penalty of between \$5,000-\$11,000.
- v. The Hawaii FCAs each have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the affected agency. Whistleblowers, or relators, cannot bring an action based on allegations that are already the subject of a state investigation or part of civil or administrative proceedings involving the state. And under the Hawaii statutes, present or former government employees cannot bring *qui tam* actions based on information learned during the course of their case which results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs; but, the relator's share may be decreased if the court finds that information provided by outside sources was the primary reason for the recovery. If the government does not intervene in the *qui tam* and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- vi. Under the Hawaii FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery.
- vii. Hawaii has a separate whistleblower protection statute, Haw. Rev. Stat. §§ 378-61 through 378-69. The statute applies to any employer who discharges, threatens or otherwise discriminates against an employee because the employee, or someone on the employee's behalf, reports or is about to report a violation of state

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or federal laws, rules, regulations or contract provisions, to the employer or to a public body. An impacted employee may bring an action within 2 years and seek injunctive relief, damages, reinstatement with all benefits and seniority, back wages, and costs. A court may also fine an employer who violates the whistleblower protection statute.

6. ILLINOIS

a. Illinois Criminal Provisions

- i. Illinois has multiple statutes used to criminally prosecute fraud or abuse in the Medicaid Program. These statutes are generally found in 305 ILCS Chapter 5 Article VIII A, covering Public Assistance Fraud. The specific criminal provisions include:
- ii. Vendor Fraud, 305 ILCS 5/8A-3, which applies when any person or entity who willfully, by means of a false statement, concealment of a material fact, or fraudulent scheme or device, attempts to obtain Medicaid benefits or payments to which they are not entitled.
- iii. Unlawful Kickbacks, 305 ILCS 5/8A-3, which criminalizes the solicitation or receipt of any remuneration for referring, purchasing, ordering, arranging for or recommending an item or service paid for in whole or in part by Medicaid funds.
- iv. Managed Care Fraud, 305 ILCS 5/8A-13, which applies to any public or private insurance entity or organization which contracts to provide, or provides, goods services, or benefits reimbursed in whole or in part with Medicaid funds, or to subcontractors of such entities. The statute applies to any person or entity who, with the intent to obtain benefits or payments greater than that to which they are entitled, knowingly executes or conspires to (i) defraud the state or health plan in connection with the delivery of or payment for health care items, services or benefits, or (ii) obtain by means of false or fraudulent pretense, statements or presentations, money or payment for health care items, services or benefits that are paid for, reimbursed or subsidized by a government health plan.
- v. Bribery and Graft in Connection with Health Care, 305 ILCS 5/8A-14, applicable to improper attempts to influence government or health plan officials to commit fraud or violate their lawful duty by offering or accepting something of value.
- vi. False Statements Related to Health Care Delivery, 305 ILCS 5/8A-15, applicable to the knowing and willful falsification, concealment or omission of a material fact or use of a false statement, writing or document, in connection with the provision of health care or related services under a government funded or mandated health plan.

b. Illinois Civil False Claims Act

- i. Illinois' Civil False Claims Act, 740 ILCS §§175/1 through 175/8, is not Medicaid-specific. It applies to any request or demand for payment made to any state officer, employee or agent, or to any state contractor, grantee or recipient, if state funds pay or reimburse a portion of the funds at issue.
- ii. The Illinois FCA applies to conduct such as:
 - Knowingly presenting or causing to be presented a false or fraudulent claim;
 - Knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim;
 - Conspiring to present false or fraudulent claims or make or use false records or statements material to a false or fraudulent claim;
 - Knowingly making, using or causing to be made a false record or statement material to an obligation to pay or transmit money to the State; and,
 - Knowingly concealing or avoiding an obligation to pay or transmit money to the

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State or failing to deliver all money owed the state.

- iii. Like federal FCA, the Illinois FCA defines "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Violators of the Illinois FCA are liable to the state for treble damages and a civil penalty of between \$5,500-\$11,000.
- v. The Illinois FCA does have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the affected agency. Whistleblowers, or relators, cannot bring an action based on allegations that are already the subject of civil or administrative proceedings involving the state, or regarding matters that have already been publicly disclosed in the media or in legal proceedings or public reports unless the individual qualifies as the original source of the disclosure. If the state intervenes in the *qui tam* case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. A court may reduce that amount based on the significance of the information contributed by the relator. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- vi. Under the Illinois FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery
- vii. Like the federal FCA, the Illinois statute contains whistleblower protections. The provision covers all employees, contractors or agents and prohibits discrimination based on the commission of lawful acts done to stop state FCA violations. The discriminated party may seek relief including reinstatement with seniority status, two times the owed back pay with interest, and compensation for other damages and costs.

7. KENTUCKY

a. Kentucky Criminal Provisions

- i. Kentucky has a criminal statute, KRS §205.8463, that applies to fraudulent acts involving the Medicaid program. The statute applies to any person who:
 - Knowingly or wantonly devises a scheme or plan or enters a conspiracy to obtain Medicaid payments by means of fictitious, false or fraudulent documents;
 - Intentionally, knowingly or wantonly makes, presents or causes to be made or presented to a state employee, a false, fictitious or fraudulent statement or entry on an application, claim or document used to determine rights to Medicaid benefits or payments; or,
 - Knowingly falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes any false writing or document knowing it contains a false statement or entry.

b. Kentucky Civil False Claims Act

- i. Kentucky has no separate state Civil False Claims Act. The terms of the federal FCA, including *qui tam* and whistleblower protections, apply to claims submitted to or paid by Kentucky Medicaid, or paid with Kentucky Medicaid funds.

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8. NEBRASKA

a. Nebraska Criminal Provision

i. Under Nebraska Public Assistance Statutes § 68-107 any person who obtains payment or other benefit by means of a willfully false statement or representation, or by impersonation or other device shall be subject to punishment as follows:

- If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class IV misdemeanor;
- If the aggregate value of all funds or other benefits obtained or attempted to be obtained if five hundred dollars or more but less than one thousand five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor;
- If the aggregate value of all funds or other benefits obtained or attempted to be obtained is one thousand five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

b. Nebraska Civil False Claims Act

i. Nebraska's Medicaid False Claims Act ("NMFCA") prohibits any person or entity from submitting a false or fraudulent claim to Nebraska's Medical Assistance Program ("Medicaid"). See Neb. Rev. Stat. § 68-934-68-947.

ii. The NMFCA applies to conduct such as:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of the False Medicaid Claims Act;
- Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or caused to be delivered, less than all of the money or property;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the State and, intending to defraud the State, makes or delivers the receipt knowing that the information on the receipt is not true;
- Knowingly buys, or receives as a pledge of an obligation or deb, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

iii. Further violations of the NMFCA include the following:

- A person is a beneficiary of an inadvertent submission of a false Medicaid claim to the state and such person subsequently discovers by fails to report the false claim to the state within sixty (60) days of discovery;
- A person acting on behalf of a provider providing goods or services to a recipient under the Nebraska Medical Assistance Program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under Nebraska Medicaid in connection with such good or service, knowing that such charge, solicitation, acceptance, or receipt is not legally payable;
- A person knowingly destroys or fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received under Nebraska Medicaid, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six (6) years after the date on which payment was received.

iii. NMFCA statute defines "knowing" and "knowingly" a person, with respect to information: has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in a reckless disregard of the truth or falsity of the information.

iv. Violators of the NMFCA are liable for damages in the amount of three times the amount

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of the false claim and a civil penalty not more than \$10,000. The violator shall also be liable to the state for the costs of a civil action brought to recover such damages.

- v. If a violator of the NMFCA furnishes officials responsible for investigating violations of the NMFCA with all information known to the violation within thirty (30) days of obtaining such information, provided that, at the time the violator furnishes such information, no criminal prosecution, civil action or administrative sanction has commenced and the violator does not have knowledge of any action or pending investigation.
- vi. Nebraska has not included a *qui tam* provision in their Medicaid False Claims Act. Therefore, whistleblowers cannot file state False Claims act lawsuits, though they can still pursue federal False Claims Act violations.

c. Whistleblower Protections

- i. Nebraska's Fair Labor Employment Practice Act contains an employee protection provision that prohibits an employer from discriminating against any employees or applicants for employment because the employee or applicant has opposed any practice or refused to carry out any action unlawful under federal law or the laws of Nebraska. An employer who violates this employee protection provision may be liable to the affected employee for restoration of benefits, back pay, and any increases in compensation that would have occurred, all with interest. See Neb. Rev. Stat. §§ 48-1114, 48-1119.
- ii. Nebraska's Health Care Facility Licensure Act prohibits health care facilities from discriminating or retaliating against a person residing in, served by, or employed at such facility who has initiated or participated in any proceeding authorized by Nebraska's Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or the Nebraska Department of Health and Human Services. See Neb. Rev. Stat. § 71-445.

9. NEW JERSEY

a. New Jersey Criminal Provisions

- i. New Jersey has a criminal statute, N.J.S.A. §30:40-17, applicable to violations in the Medicaid program. It is a crime in New Jersey for any person to willfully obtain Medicaid benefits to which the person is not entitled or in a greater amount than that to which the person is entitled.
- ii. It is also a crime under that statute for any person, corporation or entity to:
 - Knowingly and willfully make or cause to be made any false statement or representation of a material fact in any cost study, claim form or documentation necessary to apply for or receive Medicaid benefits;
 - Knowingly and willfully make or cause to be made any false statement, written or oral, of a material fact used in determining rights to Medicaid benefits or payments;
 - Concealing or failing to disclose the occurrence of an event that affects the initial or continued to rights to Medicaid benefits or payments, or the rights of any provider or entity on whose behalf applications for Medicaid benefits or payments are made;
 - Knowingly and willfully converting Medicaid benefits or payments for a use other than to benefit the entitled party; and;
 - Soliciting or receiving any kickback, rebate or bribe in connection with the furnishing of Medicaid-funded items or services.
- iii. Certain provisions of the statute may be pursued as civil violations instead of being criminally prosecuted.

b. New Jersey Civil False Claims Act

- i. The New Jersey Civil False Claims Act, N.J.S.A. 2A:32C-1 through 2A:32C-18, is not Medicaid-specific. It applies to any request or demand for payment made to any state officer, employee or agent, or to any state contractor, grantee or recipient, if the state funds or reimburses a portion of the funds at issue.

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- ii. The New Jersey FCA applies to conduct such as:
 - Knowingly presenting or causing to be presented a false or fraudulent claim;
 - Knowingly making, using or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;
 - Conspiring to defraud the state by getting a false or fraudulent claim paid or allowed; and,
 - Knowingly making, using or causing to be made a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money to the State.
- iii. The New Jersey FCA defines "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Violators of the New Jersey FCA are liable to the state for treble damages and a civil penalty of between \$5,500- \$11,000. The penalties may be adjusted upward based on adjustments to the federal FCA penalty provisions.
- v. The New Jersey FCA does have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the state. Whistleblowers, or relators, cannot bring an action based on allegations that are already the subject of civil or administrative proceedings involving the state, or regarding matters that have already been publicly disclosed in the media or in legal proceedings or public reports unless the individual qualifies as the original source of the disclosure. If the state intervenes in the *qui tam* case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. A court may reduce that amount based on the significance of the information contributed by the relator. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- vi. Under the New Jersey FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery
- vii. The New Jersey FCA does not allow present or former employees or agents of the State to act as a relator when the action is based on information discovered within the scope of their employment.
- viii. Like the federal FCA, the New Jersey FCA contains whistleblower protections. The New Jersey statute prohibits employers from making, adopting or enforcing rules or policies preventing employees from disclosing information to a State or law enforcement agency or from acting to further a FCA action. Employers cannot discharge, demote or in any way discriminate against employees because of lawful acts done to disclose information to the State or law enforcement or to further a FCA action. Affected employees who voluntarily disclosed an FCA violation are entitled to reinstatement with seniority, double back pay, and other damages and costs.

10. NEW MEXICO

a. New Mexico Criminal Provisions

- i. New Mexico has a criminal Medicaid Fraud statute, NMSA 1978 §30-44-7 that applies to such actions as:
 - Paying, soliciting, offering or receiving a kickback or bribe in connection with the furnishing of treatment, services or goods, paid for in whole or in part by the Medicaid program;

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- Paying, soliciting, offering or receiving anything of value and intending to retain it knowing it to be in excess of the amounts authorized or in excess of the rates established by Medicaid;
 - Providing a claim for Medicaid treatment, goods or services that were not ordered by a treating physician, not adequate, or for adulterated or mislabeled merchandise;
 - Presenting or causing to be presented a claim for Medicaid treatment, goods or services that is false, fraudulent, excessive, multiple, or incomplete; and,
 - Executing or conspiring to defraud Medicaid or a Medicaid managed health plan in connection with the delivery of or payment of health care benefits, or by means of false or fraudulent representations or promises.
- ii. The state may elect to pursue violations of this statute as civil, not criminal, violations. But if the state elects to pursue a civil action under this statute, the defendant cannot be sued for the same conduct under the New Mexico Civil False Claims Act.
- b. New Mexico Civil False Claims Act
- i. The New Mexico Medicaid False Claims Act, NMSA 1978 §§27-14-1 through 27-14-15, is in part modeled after the Federal FCA. The New Mexico statute applies to any written or electronic request for payment of health care services submitted to Medicaid.
- ii. The New Mexico Medicaid FCA applies to conduct such as:
- Knowingly presenting or causing to be presented a false or fraudulent Medicaid claim;
 - Knowingly making a Medicaid claim for a product or service not provided;
 - Knowingly presenting or causing to be presented a Medicaid claim when the payment is not authorized or the person is not eligible;
 - Knowingly making, using or causing to be made or used, a false record or statement to support a claim to Medicaid;
 - Conspiring to defraud the state by getting false or fraudulent claims paid by Medicaid; and,
 - Knowingly making, using or causing to be made a false record or statement material to conceal or avoid an obligation to pay or transmit money to the state relative to the Medicaid Program.
- iii. Violators of the New Mexico Medicaid FCA are liable to the state for treble damages.
- iv. The New Mexico FCA does have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the state. Whistleblowers, or relators, cannot bring an action based on allegations that are already known to the state; that are based on matters that are already the subject of civil or administrative proceedings involving the state, or regarding matters that have already been publicly disclosed in the media or in legal proceedings or public reports unless the individual qualifies as the original source of the disclosure. If the state intervenes in the *qui tam* case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. A court may reduce that amount based on the significance of the information contributed by the relator. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- v. Under the New Mexico FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery.

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- vi. The New Mexico FCA contains whistleblower protections. The provision covers all employees who are discharged, demoted or otherwise discriminated against by their employer because of lawful acts done in disclosing or reporting a New Mexico FCA action. The discriminated party may seek relief including reinstatement with seniority status, two times the owed back pay with interest, and compensation for other damages and costs.

11. NEW YORK

a. New York Criminal Provisions

- i. New York has multiple criminal statutes that may apply to Medicaid false claims.

Applicable statutes include:

- NY Social Services Law §366-b, a misdemeanor offense for any person who, with the intent to defraud, presents for payment a false or fraudulent claim or false information to Medicaid.
- NY Penal Law §177, the crime of Health Care Fraud can be a misdemeanor, or class B-E felony, depending on the amount of money involved. The statute addresses specific conduct by health care providers who defraud the system, including any public or private health insurance or managed care contract, including Medicaid.

b. New York Civil False Claims Act

- i. The New York Civil False Claims Act, State Finance Law §§187-194, is not Medicaid-specific. It applies to any request or demand for payment made to any state or local government officer, employee or agent, or to any state contractor, grantee or recipient, if state funds pay or reimburse a portion of the funds at issue.
- ii. The New York FCA applies to conduct such as:
 - Knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval;
 - Knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim;
 - Knowingly making, using or causing to be made a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money to the government; and,
 - Conspiring to commit violations of the New York FCA.
- iii. Like Federal FCA, the New York statute defines "knowingly" as acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- iv. Violators of the New York FCA are liable to the state for treble damages and a civil penalty of between \$6,000- \$12,000.
- v. The New York FCA does have *qui tam* provisions similar to the federal FCA, allowing whistleblowers to bring a civil action in the name of the state or affected local government. Whistleblowers, or relators, cannot bring an action against a government official or entity; cannot bring an action based on allegations that are already the subject of civil or administrative proceedings involving the state or local government named in the case; cannot bring an action regarding matters that are the subject of a settlement with the state or local government; and cannot bring an action if the underlying issues have already been publicly disclosed in the media or in legal proceedings or public reports. The New York statute contains specific limits on what constitutes a public disclosure.
- vi. If the state or local government intervenes in the *qui tam* case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. A court may reduce that amount based on the

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- significance of the information contributed by the relator. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs.
- vii. Under the New York FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery
 - viii. The New York FCA contains whistleblower protections. Any employee, contractor or agent who is discharged, demoted or in any way discriminated against because of lawful acts done in furtherance of a New York FCA action or to stop FCA violations is entitled to all relief necessary to make them whole, including injunctive relief, reinstatement with seniority and all benefits, double back pay, and other damages and costs. Other provisions in New York law may provide additional protections for whistleblowers, including the New York State Finance Law §191, and New York State Labor Law §740 and §741.

12. OHIO

a. Ohio Criminal Provisions

i. Ohio has a criminal Medicaid Fraud statute, Ohio Revised Code §2913.40, that applies to such conduct as:

- Knowingly making or causing to be made a false or misleading statement or representation for use in obtaining Medicaid reimbursement;
- Charging or seeking other remuneration, such as kickbacks or rebates, in connection with furnishing goods or services paid for in whole or in part by Medicaid;
- Charging or seeking other remuneration provided under Medicaid besides the authorized reimbursement and any authorized cost sharing expenses; *or*,
- Knowingly falsifying, destroying, altering, or concealing records necessary to support Medicaid claims for a period of six years.

b. Ohio Civil False Claims Act and Whistleblower Protections

i. Ohio has a Civil Medicaid False Claims Act, Ohio Revised Code §5111.03, that does not contain whistleblower provisions. The statute imposes civil liability on any Medicaid provider or contractor who:

- By deception, obtains or attempts to obtain Medicaid payments to which they are not entitled;
- Willfully receives payments or an amount of payments to which they are not entitled; *or*,
- Falsifies any report or document relating to Medicaid payments.

ii. The State may seek treble damages, plus interest, penalties of between \$5,000-\$10,000 *per* claim or falsification, and reasonable expenses, for violations of the Ohio FCA.

iii. The federal FCA, with its *qui tam* provisions and protections, can be used to pursue matters involving the Ohio Medicaid program.

iv. Although the Ohio FCA contains no *qui tam* provisions or protections, Ohio Revised Code §4113.52 prohibits employers from taking disciplinary or retaliatory action against an employee who makes a lawful report of a violation of state or federal statutes. There are specific notification provisions required, but the law does allow impacted employees to seek injunctive relief, payment of back wages, reinstatement with benefits and seniority rights, and costs.

13. SOUTH CAROLINA

a. South Carolina Medicaid False Claims Act

i. The South Carolina Medicaid False Claims Act, S.C. Code Ann. §43-7-60, can be pursued by the State Attorney General's office as either a criminal or civil statute.

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- ii. Under the statute, it is unlawful for any provider to:
 - Knowingly and willfully make or cause to be made a false claim, statement or representation of material fact in relation to an application or request for Medicaid payment or reimbursement, or in a report or certification submitted to Medicaid; or
 - Knowingly and willfully conceal or fail to disclose any material fact or event which affects the initial or continued entitlement to Medicaid payment or reimbursement, or the amount of payment or reimbursement.
- iii. Criminal violations of the statute are misdemeanors. If pursued civilly, the Attorney General can seek triple damages and civil penalties of two thousand dollars for each false claim or representation.
- iv. While there are no whistleblower provisions or protections in the South Carolina statute, the federal FCA provisions and protections are applicable to potential cases involving the South Carolina Medicaid program.

14. TEXAS

a. Texas Criminal Provisions

- i. Texas Penal Code Title 7, Chapter 35A contains the criminal statutes covering Medicaid Fraud. The statute applies to such conduct as:
 - Knowingly making or causing to be made a false statement or misrepresentation of a material fact permitting a person to receive a Medicaid payment or benefit that is not authorized or is greater than that authorized;
 - Knowingly concealing or failing to disclose information permitting a person to receive a Medicaid payment or benefit that is not authorized or is greater than that authorized;
 - Knowingly making, inducing, causing to be made, or seeking to induce a false statement or misrepresentation of a material fact concerning information required to be provided under a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid program;
 - Knowingly paying, charging, soliciting, accepting or receiving an authorized kickback related to a Medicaid product or service;
 - Knowingly presenting or causing to be presented Medicaid claims for products or services rendered by unlicensed persons;
 - Knowingly making or causing to be made a Medicaid claim for products or services not approved by a treating physician;
 - Knowingly making or causing to be made a Medicaid claim for products or services that are inadequate, inappropriate, substandard, mislabeled, debased, adulterated, or otherwise inappropriate;
 - Medicaid Managed Care Organization failing to provide required benefits or services to beneficiaries, failing to provide information required by law, or engaging in fraudulent activity in connection with enrolling eligible Medicaid beneficiaries or in connection with marketing its services;
 - Knowingly obstructing an investigation of Medicaid Fraud; and,
 - Knowingly making or causing to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state under the Medicaid program.
- ii. The severity of the criminal violation and potential punishment under this section depends upon the amount of money at issue.
- iii. Texas Human Resources Code, Section 32.039, also contains authority for imposition of administrative or criminal penalties for such activities as submitting false claims, paying or receiving improper kickbacks, improperly denying payment for goods or services, or

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engaging in fraudulent enrollment with respect to contracts or provider agreements with the Medicaid Agency.

- iv. Like most states, the Texas Health and Human Services Commission has administrative authority to take action involving Medicaid overpayments. But a statute in the Texas Government Code, Chapter 531, Section 531.101, provides the Commission discretion to grant monetary awards for the reporting of Medicaid fraud. If an individual reports Medicaid fraud and it is determined that the report results in the recovery of administrative penalties, the Commission may under certain circumstances award that person up to 5% of the amount of the penalty imposed. But persons who also file a *qui tam* action under the Texas Civil False Claims Act are not eligible for this award.

b. Texas Civil False Claims Act

- i. Texas has a Medicaid-specific Civil False Claims Act, called the "Medicaid Fraud Prevention" Act, in the Texas Human Resources Code, Chapter 36. It applies to any written or electronic request or demand that identifies a product or service purportedly provided under the Texas Medicaid program.
- ii. The Texas FCA applies to many of the same types of conduct as the criminal Medicaid Fraud statute, only with a lesser burden of proof and specific definition of "knowingly". In particular, the Texas FCA applies to such conduct as:

- Knowingly making or causing to be made a false statement or misrepresentation of a material fact permitting a person to receive a Medicaid payment or benefit that is not authorized or is greater than that authorized;
- Knowingly concealing or failing to disclose information permitting a person to receive a Medicaid payment or benefit that is not authorized or is greater than that authorized;
- Knowingly making, inducing, causing to be made, or seeking to induce a false statement or misrepresentation of a material fact concerning information required to be provided under a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid program;
- Knowingly paying, charging, soliciting, accepting or receiving an authorized kickback related to a Medicaid product or service;
- Knowingly presenting or causing to be presented Medicaid claims for products or services rendered by unlicensed persons;
- Knowingly making or causing to be made a Medicaid claim for products or services not approved by a treating physician;
- Knowingly making or causing to be made a Medicaid claim for products or services that are inadequate, inappropriate, substandard, mislabeled, adulterated, debased, or otherwise inappropriate;
- Medicaid contracting Managed Care Organization failing to provide required benefits or services to beneficiaries, failing to provide information required by law, or engaging in fraudulent activity in connection with enrolling eligible Medicaid beneficiaries or in connection with marketing its services;
- Knowingly obstructing an investigation of Medicaid Fraud; and,
- Knowingly making or causing to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state under the Medicaid program.

- i. The Texas statute defines "knowingly" as acting with actual knowledge of the information, in conscious indifference to the truth or falsity of the information, or with reckless disregard of the truth or falsity of the information.
- ii. Violators of the Texas FCA are liable to the state for damages and a civil penalty of between \$5,500- \$11,000 per violation, unless a violation resulted in injury to an elderly or disabled individual or a juvenile, in which case the potential penalties increase to up

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to \$15,000 per violation.

- iii. The Texas FCA does have qui tam provisions allowing whistleblowers to bring a civil action in the name of the state or affected local government. Whistleblowers, or relators, cannot bring an action based on allegations that are already the subject of civil or administrative proceedings or if the underlying issues have already been publicly disclosed in the media, unless the relator qualifies as the original source of the disclosure.
- iv. If the state or local government intervenes in the qui tam case and it results in a judgment or settlement, the relator is entitled to recover between 15%-25% of the proceeds as well as their fees and costs. If the government does not intervene and the relator pursues the case on their own and it results in a settlement or judgment, the relator will receive between 25%-30% of the proceeds as well as coverage of their fees and costs. A court may reduce a relator's share based on the significance of the information contributed by the relator.
- v. Under the Texas FCA, if the relator planned and initiated the underlying conduct, the court may reduce the relator's share of any recovery. If the relator is convicted of a crime arising from their role in the conduct, the relator will be dismissed from the case and is not entitled to any recovery
- vi. The Texas FCA contains whistleblower protections. An employee who is discharged, demoted or in any way discriminated against because of lawful acts done in furtherance of an FCA action is entitled to relief including reinstatement with seniority, at least double back pay with interest, and other damages and costs.
- vii. The Texas FCA also contains specific immunity provisions. A person cannot be criminally or civilly liable for providing access to documentary material as defined in the statute, to an employee of the State Attorney General, a state or federal prosecutor, or other specified individuals.

15. WEST VIRGINIA

a. West Virginia Criminal Provisions

- i. West Virginia has a criminal statute addressing bribery, false claims and conspiracy in the Medicaid Program. W.Va. Code §9-7-5 prohibits any person from:
 - Soliciting, offering, paying or receiving unlawful and unauthorized remuneration, including kickbacks, rebates or bribes, with the intent of causing an expenditure of Medicaid funds;
 - Making or presenting or causing to be made or presented a Medicaid claim knowing that it is false, fictitious or fraudulent; or,
 - Entering an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fictitious or fraudulent Medicaid claim.
- ii. Violations of the statute are felony offenses, punishable by fines and imprisonment.

b. West Virginia Civil False Claims Act

- i. West Virginia has a civil remedy for Medicaid fraud, W.Va. Code §9-7-6. This provision applies to any person, firm, corporation or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent schemes, obtains or attempts to obtain Medicaid benefits, payments or allowances to which they are not entitled or in a greater amount than to which they are entitled.
- ii. The state Attorney General may recover treble damages for violations of this statute, plus costs.

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- iii. The West Virginia civil statute contains neither qui tam provisions nor specific whistleblower protections. However, the federal FCA and whistleblower protections are applicable to matters involving the West Virginia Medicaid Program.